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09/536,345	03/25/2000	Richard Polevoy	2340-1-008	3087

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KLAUBER & JACKSON  
411 HACKENSACK AVENUE  
HACKENSACK, NJ 07601

EXAMINER

HO, THOMAS Y

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/536,345

Applicant(s)

POLEVOY ET AL.

Examiner

Thomas Y Ho

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-19,21 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-19,21 and 23-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 11 recite, respectively, “A protective shield to enclose and contain sharp edges of a bed frame member...” and “A protective shield to enclose and contain a sharp edge or corner at at least one location about a bed frame...” Applicant is claiming a “protective shield” with the bed frame only being functionally recited. However, in claims 8-10 and 13-16, the bed frame is positively recited.

The Examiner is considering the claims to be drawn to “a protective shield”; thus, any recitations referring to the bed frame have not been given patentable weight.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Cartwright

USPN5890244.

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As to claim 4, Cartwright discloses a bed frame having:

- Sharp edges at at least one location.
- Said at least one location comprising side rails (vertical bars, R) having ends.
- Cross members (horizontal bars, R) affixed at junction points to said side rails intermediate said ends.
- Leg assemblies AM extending downwardly from said junction points of said cross members and said side rails.
- Brackets adapted to affix a headboard to said bed frame (fig. 10).
- Protective shields comprising at least first and second housings having formed peripheral surfaces that are joined together by means of a snap fit. The hook and loop fasteners provide the snap fit.
- Said protective shields affixed to said at least one location of said bed frame to enclose and contain the sharp edges at said at least one location.

As to claim 5, Cartwright discloses a bed frame having:

- Sharp edges at at least one location.
- Said at least one location comprising side rails (vertical bars, R) having ends.
- Cross members (horizontal bars, R) affixed at junction points to said side rails intermediate said ends.
- Leg assemblies AM extending downwardly from said junction points of said cross members and said side rails.
- Brackets adapted to affix a headboard to said bed frame (fig. 10).

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- Protective shields comprising at least first and second housings joined together and having free ends.
- One of said free ends of one of said at least first and second housings has a tab extending therefrom. The hook of the hook and loop fastening system is a tab.
- Said other free end of said other housing has an aperture adapted to receive said tab to affix said free ends together. The loop of the hook and loop fastening system is an aperture.
- Said protective shields adapted to be affixed to said bed frame at said at least one location to enclose the sharp edges at said at least one said location.
- Brackets adapted to affix a headboard to said bed frame (fig.10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 6-19, 21, 23, and 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartwright USPN5890244 in view of Wakeland USPN4109887.

As to claim 1, Cartwright discloses a bed frame comprising:

- Side rails (vertical bars, R) having ends.
- Cross members (horizontal bars, R) affixed at junction points to said side rails intermediate said ends.

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- Said bed frame having leg assemblies AM extending downwardly from said junction points of said cross members and said side rails (vertical bars, R).
- Protective shields comprising housings affixed to said bed frame and adapted to enclose the ends of said side rails (vertical bars, R) and said junction points of said side rails (vertical bars, R) and said cross members (horizontal bars, R) to cover sharp ends at said locations.

Cartwright fails to disclose or suggest:

- Molded plastic housings.

Wakeland discloses a cap made of either foam, molded plastic, metal or wood (col.8, ln.10-28, ln.47-55), and discloses that any of the materials can be used in place of one another, and choice between materials is a design choice within the skill of the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housings disclosed by Cartwright to be made of molded plastic, as taught by Wakeland, because it is a design choice within the skill of the art.

As to claim 2, Cartwright discloses a bed frame wherein:

- Said protective shields comprise at least first and second housing jointed together by a living hinge 19.
- At least two of said first and second housings having free ends.
- Said protective shields having means to affix said free ends together to affix said protective shields to said bed frame. Cartwright discloses hook and loop affixing means.

As to claim 6, Cartwright discloses a protective shield comprising:

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- First and second foam housings (col.3, ln.18-25).
- Said first and second housings being joined together and having free ends.
- Said first and second housings having a securing means 32 and 34 at said free ends thereof.
- Said housings adapted to be affixed about said sharp edges of a bed frame to enclose and contain the sharp edges.

Cartwright fails to disclose or suggest:

- Molded plastic housings.

Wakeland discloses a cap made of either foam, molded plastic, metal or wood (col.8, ln.10-28, ln.47-55), and discloses that any of the materials can be used in place of one another, and choice between materials is a design choice within the skill of the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housings disclosed by Cartwright to be made of molded plastic, as taught by Wakeland, because it is a design choice within the skill of the art.

As to claim 7, Cartwright discloses a protective shield wherein:

- Said hinge 19 is a living hinge.

As to claim 8, Cartwright discloses a protective shield wherein:

- Said shield is adapted to be affixed to a bed frame member when said free ends are affixed together. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

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As to claim 9, Cartwright discloses a protective shield wherein:

- A bed frame member is a leg assembly. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

As to claim 10, Cartwright discloses a protective shield wherein:

- A bed frame member is at least one side rail. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

As to claim 11, Cartwright discloses a protective shield comprising:

- First and second housings.
- Said first and second housings joined together and having free ends.
- Said first and second housing having an interlocking securing means at said free ends thereof.
- Said housing adapted to be affixed about said at least one location of said bed frame member to enclose and contain the sharp edges or corners by joining the interlocking securing means at said free ends of said first and second housings.

Cartwright fails to disclose or suggest:

- Molded plastic housings.

Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited. Wakeland discloses a cap made of either foam, molded plastic, metal or wood (col.8, ln.10-28, ln.47-55), and discloses that any of the materials can be used in place of one another, and choice between materials is a design choice within the skill of the art. It would have been obvious to one of ordinary skill in the art at the time the invention



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was made to modify the housings disclosed by Cartwright to be made of molded plastic, as taught by Wakeland, because it is a design choice within the skill of the art.

As to claim 12, Cartwright discloses a protective shield wherein:

- Said hinge 19 is a living hinge. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

As to claim 13, Cartwright discloses a protective shield wherein:

- Said at least one location comprises enclosing and containing legs. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

As to claim 14, Cartwright discloses a protective shield wherein:

- Said at least one location comprises enclosing and containing junctions of a cross member and a side rail of a bed frame. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

As to claim 15, Cartwright discloses a protective shield wherein:

- Said at least one location comprises side rails of a bed frame. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

As to claim 16, Cartwright discloses a protective shield wherein:

- Said at least one location comprises ends of side rails, junctions of cross members and side rails, legs, bracket for affixing a headboard and side rails of a bed frame. Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited.

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As to claim 17, Cartwright discloses a method of protecting locations of a bed frame

- having sharp edges, said method comprising:

Providing a pair of housings joined together by a living hinge 19 and having free ends.

- Positioning the housings so as to enclose the sharp edges of the bed frame within the housings.
- Closing the housings together to enclose and contain the sharp edges.
- Attaching the free ends together to retain the molded plastic housings to the bed frame.

Cartwright fails to disclose or suggest:

- Molded plastic housings.

Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited. Wakeland discloses a cap made of either foam, molded plastic, metal or wood (col.8, ln.10-28, ln.47-55), and discloses that any of the materials can be used in place of one another, and choice between materials is a design choice within the skill of the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housings disclosed by Cartwright to be made of molded plastic, as taught by Wakeland, because it is a design choice within the skill of the art.

As to claim 18, Cartwright discloses a protective shield comprising:

- A plurality of housings.
- Said housing being joined together and having free ends including interlocking means to affix said free ends together.

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- Said housings being affixed to said bed frame to enclose said ends of said side rails.
- Said junctures of said side rails and said cross members by affixing said free ends together by said interlocking means.

Cartwright fails to disclose or suggest:

- Molded plastic housings.

Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited. Wakeland discloses a cap made of either foam, molded plastic, metal or wood (col.8, ln.10-28, ln.47-55), and discloses that any of the materials can be used in place of one another, and choice between materials is a design choice within the skill of the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housings disclosed by Cartwright to be made of molded plastic, as taught by Wakeland, because it is a design choice within the skill of the art.

As to claim 19, Cartwright discloses a protective shield further comprising:

- Said housings adapted to be joined together to enclose substantially the entire length of said rails.

As to claim 21, Cartwright discloses a protective shield further wherein:

- Said hinge 19 is a living hinge.

As to claim 23, Cartwright discloses a protective shield wherein:

- Said interlocking means having interlocking peripheral edges adapted to be snapped together to join said free ends of said housings together. The hook and loop fasteners snap together.

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As to claim 26, Cartwright discloses a protective shield comprising:

- First and second housings.
- Said first and second housings joined together and having free ends.
- Said first and second housings having an interlocking securing means at said free ends thereof.
- Said housings adapted to be affixed about said sharp edge or corner of a structural or ornamental member to enclose and contain a sharp edge or corner by joining the interlocking securing means at said free ends of said first and second housings.

Cartwright fails to disclose or suggest:

- Molded plastic housings.

Limitations concerning the bed frame member hold no patentable weight because the bed frame is only functionally recited. Wakeland discloses a cap made of either foam, molded plastic, metal or wood (col.8, ln.10-28, ln.47-55), and discloses that any of the materials can be used in place of one another, and choice between materials is a design choice within the skill of the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housings disclosed by Cartwright to be made of molded plastic, as taught by Wakeland, because it is a design choice within the skill of the art.

As to claim 27, Cartwright discloses a protective shield wherein:

- Said first and second housings are joined together by means of a hinge 19.

As to claim 28, Cartwright discloses a protective shield wherein:

- Said hinge 19 is a living hinge.

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As to claim 29, Cartwright discloses a protective shield wherein:

- Said interlocking securing means comprises a tab on one of said first and second housings and an aperture on the other of said first and second housings. Cartwright discloses the use of hook and loop fasteners for joining. The hook is a tab, and the loop is an aperture.
- Said tab interlocks into said aperture to join said free ends of said first and second housings together. Cartwright discloses the use of hook and loop fasteners for joining. The hook is a tab, and the loop is an aperture.

As to claim 30, Cartwright discloses a protective shield wherein:

- Said interlocking securing means comprises interlocking edges on said free ends of said first and second housings adapted to be snapped together to join said free ends of said first and second housing together. Cartwright discloses the use of hook and loop fasteners for joining. The hook is a tab, and the loop is an aperture, and they snap together in an interlocking manner to join the free ends.

As to claim 31, Cartwright discloses a protective shield wherein:

- Said first and second housings are joined together by means of a hinge 19.

As to claim 32, Cartwright discloses a protective shield wherein:

- Said first and second housings are jointed together by means of a hinge 19.

As to claim 33, Cartwright discloses a protective shield wherein:

- The improvement comprises said first and second housings being joined together by means of a hinge.

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Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feld  
USPN5867853 in view of Quintile USPN5628080.

As to claim 24, Feld discloses a protective shield having:

- A pair of housings adapted to be joined together to enclose a structural member 11 of a bed frame having sharp edges to provide protection to a user of a bed frame.

Feld fails to disclose or suggest:

- Said shield having indicia permanently placed on said shield.

Quintile discloses a shield having indicia permanently placed on said shield to protect and decorate (col.4, ln.27-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shield disclosed by Feld to have indicia permanently placed thereon, as taught by Quintile, to protect and decorate simultaneously.

As to claim 25, Feld discloses a protective shield comprising:

- A pair of housings affixed together to enclose the sharp edges of said at least one structural member to provide protection to a user of the bed frame.

Feld fails to disclose or suggest:

- Said protective shield having indicia permanently placed thereon indicating the source of the bed frame.

Quintile discloses a shield having indicia, indicative of the source of a bed frame/mattress frame, permanently placed on said shield to protect and decorate (col.4, ln.27-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shield disclosed by Feld to have indicia permanently placed thereon, as taught by Quintile, to protect and decorate simultaneously.

***Response to Arguments***

Applicant's arguments with respect to claims 1-2, 4-19, 21, 23, and 26-33 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 9/18/02 have been fully considered but they are not persuasive.

As to claims 24-25, Applicant argues that because the indicia disclosed by Quintile does not have the same use, it does not render the claim obvious over the prior art. In response to applicant's argument that they indicia are of different uses, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The important point is that the Quintile reference teaches to place indicia on a protective shield structure, and the Feld reference discloses the protective shield structure. The user's motivations/uses are of no relevance to the patentability of the structure.

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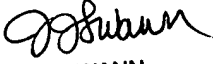
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y. Ho whose email address is thomas.ho@uspto.gov and telephone number is (703) 305-4556. The examiner can normally be reached on M-F 9:30AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326.

TYH

November 15, 2002

  
J. J. SWANN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600